No. 17-778

In the Supreme Court of the United States

JAMAR ALONZO QUARLES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF AMICI CURIAE FEDERAL PUBLIC DEFENDERS FOR THE NORTHERN, WESTERN, AND SOUTHERN DISTRICTS OF TEXAS SUPPORTING PETITIONER

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BRIEF OF AMICI CURIAE FEDERAL PUBLIC DEFENDERS FOR THE NORTHERN, WESTERN, AND SOUTHERN DISTRICTS OF TEXAS SUPPORTING PETITIONER

INTEREST OF AMICI CURIAE[1]

Amici are Jason D. Hawkins, the Federal Public Defender for the Northern District of Texas; Maureen Scott Franco, the Federal Public Defender for the Western District of Texas; and Marjorie A. Meyers, the Federal Public Defender for the Southern District of Texas. They represent indigent defendants in three of the nation's ten largest cities. Many of those defendants are currently subject

[1] All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part, and no person or entity other than Amici made a monetary contribution intended to fund the preparation or submission of this brief.

to mandatory sentences under the Armed Career Criminal Act, 18 U.S.C. § 924(e) (ACCA). These clients include Michael Herrold, who is Respondent and Cross-Petitioner in two related cases pending before this Court (Nos. 17-1445 and 17-9127). See *United States* v. *Herrold*, 883 F.3d 517 (5th Cir. 2018) (en banc). And these clients stand to benefit if the Court holds for Petitioner under the argument he advances. This is because Texas's "burglary" statute, like Michigan's home-invasion statute and similar statutes in other states, allows for a conviction even where the trespasser lacks any intent to commit another crime *at the moment* he initially trespassed. If, as Petitioner maintains, such statutes lacking any contemporaneous-intent requirement do not fit within ACCA's generic burglary definition, then many of amici's clients burglary convictions (from Texas and elsewhere) cannot serve as ACCA predicates. Amici thus do not want to detract in any way from Petitioner's position.

Amici write instead to add further support to Petitioner by highlighting another feature of *Taylor*'s generic burglary definition that makes ACCA inapplicable in this case—*Taylor*'s definition requires the formation of specific intent to commit some other crime while trespassing. Yet the Michigan home-invasion statute, like those in Texas and a few other states, allows burglary convictions even when the defendant *never* forms specific intent to perform a post-entry crime. These statutes instead allow burglary convictions when the crime committed after the initial trespass involves only recklessness, negligence, or indeed, strict liability. This is an additional reason to deem these statutes too broad to fit within ACCA's generic burglary definition. Given the stakes for Petitioner, for amici's clients like Harrold, and for other defendants whose ACCA-predicate offenses involve burglary stat-

utes similar to Michigan's, amici urge the Court to consider this argument as a compelling reason to hold for Petitioner in this case, even if—indeed, especially if—the Court does not fully embrace Petitioner's own position.

INTRODUCTION AND SUMMARY OF ARGUMENT

From the beginning, "burglary" has been enumerated among the "violent felon[ies]" that count toward imposition of a 15-year mandatory minimum sentence under ACCA. Pub. L. No. 98-473, ch. 18, § 1802, 98 Stat. 1837, 2185 (1985). Nearly 30 years have elapsed since this Court first determined that the "generic definition of burglary" ACCA references is restricted to "an unlawful or unprivileged entry into, or remaining in, a building or other structure, *with intent* to commit a crime." *Taylor* v. *United States*, 495 U.S. 575, 598 (1990) (emphasis added).

The question in this case is whether *Taylor*'s "generic burglary" definition requires intent to be formed at a specific time—whether the invader must harbor the intention to commit some other crime *at the moment* he first trespassed, or whether it is enough that the trespasser later develops that intent *during* the trespass. Petitioner cited the circuit conflict over this question as grounds for this Court's review. And to this point, that is the question on which the Petitioner and the Government have joined issue.

Amici agree that Petitioner has the better end of that argument. Yet there is a related issue that ought to be considered in determining whether a state statute fits within the generic burglary definition. And this one tilts just as powerfully toward Petitioner: *Taylor*'s generic burglary definition requires specific intent to commit another crime while trespassing. Yet some burglary-like offenses, such as Michigan's home-invasion statute, allow a

conviction whenever a trespasser commits any crime—even if that crime is committed with a mental state less culpable than intent, like mere knowledge, recklessness, negligence, or even strict liability.

Four other states besides Michigan have expanded their definitions of burglary to include circumstances in which the putative burglar commits a crime requiring less than criminal intent. Those other states are Minnesota, *see* Minn. Stat. § 609.582 (eff. Aug. 1, 1988); Montana, see Mont. Code § 45-6-204(1)(b) & (2)(a)(ii) (eff. Oct. 1, 2009); Tennessee, see Tenn. Code § 39-14-402(a)(3) (eff. July 1, 1995); and Texas, see Tex. Penal Code § 30.02(a)(3) (eff. Jan. 1, 1974). The trouble with all these statutes is not merely a lack of contemporaneous intent. The trouble, as Judge Sykes put it in *Van Cannon* v. *United States*, is also that these statutes do not "require proof of intent to commit a crime *at all*—not at *any* point during the offense conduct." 890 F.3d 656, 664 (7th Cir. 2018) (emphasis added). That gave Judge Sykes reason to conclude that a conviction under Minnesota's nearly identical burglary statute, Minn. Stat. § 609.582 subd. 2, fell outside of ACCA's generic burglary definition for *two* reasons: not only did it not require proof of *contemporaneous* intent, it did not require proof of *any* intent. 890 F.3d at 664–665. Amici urge the Court to follow a similar path in analyzing ACCA's applicability to the trespass-plus-crime variant of Michigan's home-invasion statute. The Court can, and should, rule that the Michigan statute has the same problems as Minnesota's, which make it incapable of fitting within the generic burglary definition. And either, or both, of these fit problems prevent it from operating as an ACCA predicate offense.

This will hardly matter if the Court rules for Petitioner based on the argument he has advanced. If generic

burglary requires proof of specific intent to commit another crime *at the moment* an offender first trespasses, then obviously a crime like Michigan home invasion—which lacks any intent element at all—would not fit. But if the Court were inclined to reject that argument, or if the Court splits on it, amici's argument should still prove an attractive alternative. It fits squarely within the Question Presented. It fares just as well as Petitioner's argument in answering the Government's primary substantive argument. It follows directly from the generic burglary definition that ACCA adopted and *Taylor* retains. It is also narrow in scope, given the rarity of defining "burglary" in this unusual way. And the argument amici urge operates in a manner that yields simple rules that are easy to apply to other statutes in other cases. Accordingly, amici offer this argument as an alternative basis to rule for Petitioner—and a far superior alternative to a ruling for the Government in this case.

ARGUMENT

I. *Taylor*'s generic burglary definition requires that the defendant possess a *specific intent* to commit another crime beyond trespass.

1. "Since the time of Blackstone, the defendant's intent to commit a crime in the building" after an unlawful entry "has been the characteristic distinguishing burglary from mere trespass," both in England and in the United States. *State* v. *Chatelain*, 220 P.3d 41, 45 (Or. 2009) (en banc); 4 William Blackstone, *Commentaries on the Laws of England* 227 (1769) ("[I]t is clear, that [the] breaking and entry must be with a felonious intent, otherwise it is only a trespass."); accord 3 Joseph Chitty, *A Practical Treatise on the Criminal Law* 1095 (1816) ("No

breaking and entering * * * will be esteemed burglary unless the party *intended*, at the time, to commit a felony.") (emphasis added) (citations omitted).

This characteristic intent necessary for burglary requires an advance plan: a "particular intent to do a particular act." 2 Joel Prentiss Bishop, *Commentaries on the Criminal Law* § 112 (3d ed. 1865). That mental state cannot be satisfied by anything less than true criminal intent. One who is *planning* is not acting recklessly or negligently. Nor can one plan to mistakenly but understandably run afoul of a strict-liability law. Planning requires intent.

2. Congress defined burglary to require this sort of intentional planning when it enacted ACCA in 1984. Pub. L. No. 98-473, ch. 18, § 1083(a), 98 Stat. 1837, 2185 (1984). The statute defined burglary as "any felony consisting of entering or remaining surreptitiously within a building that is property of another with *intent* to engage in conduct constituting a Federal or State offense." *Ibid.* (emphasis added).

3. When that definition of burglary was deleted in 1986, an "inadvertent casualty of a complex drafting process," *Taylor*, 495 U.S. at 589-590, the Court drew upon nationwide surveys of state burglary laws to craft a substitute. To determine what the "generic, contemporary meaning of burglary" ought to include, 495 U.S. at 598, the Court noted that "[b]urglary was defined by the common law to be the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony," *id.* at 580 n.3 (citation omitted). While the Court recognized some of those common-law elements had not been retained in some modern-day state-law variants, the Court made clear that specific intent remained integral to the generic offense. As Petitioner has noted,

Taylor drew principally from two authorities: "the 1986 edition of LaFave and Scott's" treatise *Substantive Criminal Law*, "and the American Law Institute's Model Penal Code." Pet. Br. 23 (citing 495 U.S. at 598 & n.8). Both unequivocally took the position that intent remained a requirement for burglary. See *United States* v. *McArthur*, 836 F.3d 931, 939 (8th Cir. 2016). (citing LaFave & Scott and the Model Penal Code).

The Model Penal Code's definition of burglary requires proof that the defendant "enter[ed] a building or occupied structure * * * with *purpose* to commit a crime therein." Model Penal Code § 221.1(1)(1980) (emphasis added). Similarly, LaFave and Scott explained that the "prevailing view in the modern codes" is that an intent to commit an offense was required, even if the nature of the offense itself was unimportant—"any offense will do." 2 LaFave & Scott § 8.13(e), at 473–74 (1986).

This idea that burglary necessarily involves intent and purpose to commit an additional crime while trespassing, not mere recklessness, negligence or less, reflected practice among the states at the time of ACCA's 1984 enactment and 1986 revision. During that period, the burglary analogs of virtually every state required prosecutors to prove that the offender *intended* to commit some crime (other than trespass) inside the premises. By that time, most states had expanded burglary to reach not only someone who *entered* without authorization, but also someone who made a "lawful entry" but then "surreptitiously" remained after his license expired. Under either of these widely-adopted theories, unlawful *entry* or unlawful *remaining*, prosecutors had to prove "the requisite intent to commit a crime within" the premises. 2 LaFave & Scott, § 8.13(b), at 468 (1986).

LaFave & Scott identified only "one jurisdiction" that had dispensed with the intent element: Texas. *Id.* § 813(e), at 475. In addition to the two standard theories of burglary liability, Texas created a *third* alternative: unlawful entry, followed by commission of any "felony, theft, or an assault." Tex. Penal Code § 30.02(a)(3). Compare Tex. Penal Code § 30.02(a)(1) (entry-with-intent) & (a)(2) (surreptitiously remaining with intent), with Tex. Penal Code § 30.02(a)(3) (eff. Jan. 1, 1974) (enacted Tex. Acts 1973, 63rd leg., ch. 399 § 1). And in Texas today, there are numerous felonies and assaults that can be committed recklessly, negligently, or without specific intent. See, e.g., Tex. Penal Code § 22.04(a) (making it a felony if the defendant "intentionally, knowingly, recklessly, intentionally, knowingly, recklessly, or with criminal negligence" causes serious injury to a child); *id.* § 22.01 (making recklessly causing bodily injury a felony); *id.* § 22.011(a)(2) (making statutory rape a "strict liability offense," *May* v. *State*, 919 S.W.2d 422, 424 (Tex. Ct. Crim. App. 1996) (en banc)).

Texas was thus the first, and when ACCA was enacted, the only state to extend its crime of burglary to include situations where a trespasser committed a reckless or negligent crime inside the building. This was an entirely new variant of burglary, more akin to an aggravated form of criminal trespass.[2] Judge Sykes called this new sort of criminal-trespass-as-burglary variant "trespass-plus-crime." See *Van Cannon*, 890 F.3d at 664 (discussing Minnesota burglary).

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[2] When Maine enacted a similar trespass-plus-crime offense in 1999, it recognized that this was an "aggravated" *trespassing* offense, not a *burglary* offense. See Me. Rev. Stat. tit. 17-A, § 402-A.

When *Taylor* identified the elements of a generic burglary crime, it excluded unusual outliers like burglary-by-shoplifting and vending-machine burglary. 495 U.S. at 599. It is therefore no surprise that the generic definition left no room for this just emerging trespass-plus-crime theory.[3] Instead, *Taylor*'s generic burglary definition adhered to its common-law forebears and state-law contemporaries, demanding that "burglary" involve "an unlawful or unprivileged entry into, or remaining in, a building or other structure, with *intent* to commit a crime." *Id.* at 598 (emphasis added). It requires intent. And that makes ACCA's definition of generic burglary too narrow to accommodate statutes requiring anything less.

II. State trespass-plus-crime laws, like Michigan's, lack the mental culpability *Taylor* requires for generic burglary.

In the years since *Taylor*, a few states have followed Texas's lead and expanded their burglary statutes to include one or more trespass-plus-crime alternatives. These variants do not require proof of specific intent.

1. As Petitioner notes (Br. at 8-9), Michigan's home-invasion crime is among them. Michigan enacted that statute more than a decade after ACCA. Mich. Comp. L. § 750.110a(2), (3), (4)(a) (eff. Oct. 1, 1999). "A person is guilty" of the third-degree Michigan offense if he "enters a dwelling without permission and, at any time while he

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[3] *Taylor* easily concluded that burglary of a vending machine was broader than the generic form of the offense, even though "[a] few States' burglary statutes" had expanded their definitions that far. 495 U.S. at 599. At the time, at least three states defined "burglary" to include offenses against vending machines." See Tex. Penal Code § 30.03 (eff. 1974); Colo. Rev. Stat. § 18-4-204(1) (eff. 1981); Okla. Stat. tit. 21, § 1435(A) (eff. 1961). Texas's new trespass-plus-crime theory of burglary was even rarer than its vending-machine cousin.

or she is entering, present in, or exiting the dwelling, commits a misdemeanor." Mich. Comp. L. § 750.110a(4)(a).

The Michigan Penal Code, like Texas's contains numerous misdemeanors likely to be committed by a *negligent* or *reckless* trespasser. For example, losing a dog while traveling is a misdemeanor, Mich. Comp. L. § 750.50(2)(e), unless the owner makes a "reasonable effort to locate the animal." So a traveler with a dog who breaks into a vacant cabin during a Michigan winter, only to have the dog run away in pursuit of some prey, has committed third-degree home invasion. If the trespasser is a father accompanied by his own child, and the father's omission or reckless act causes the child injury, Mich. Comp. L. § 750.136b(7)(a), the father is a third-degree home invader. A hunter who breaks into the same abandoned cabin to escape an unexpected winter storm, and then discharges his rifle "because of carelessness, recklessness or negligence, but not willfully or wantonly," Mich. Comp. L. § 752.862, is guilty of home invasion if the inadvertent shot removes plaster from the walls.

As Petitioner points out, a consensual tryst between two young people can also lead to a charge of misdemeanor "sexual conduct," even if the older teen reasonably believes the younger is old enough to legally consent. Pet. Br. 9 (citing *People* v. *Cash*, 351 N.W.2d 822, 824–828 (Mich. 1984)). If the amorous couple (or one of its members) slips into a dwelling uninvited, then the elder is guilty of home invasion. And that is true even if the defendant never *intended* to commit any crime at all other than the trespass.

2. Besides Texas and Michigan, three other states expanded their definition of "burglary" to include commission of a crime requiring less than criminal intent while trespassing. All three made this change after ACCA was

enacted. Minnesota, for example, in 1988 enacted a statute, Minn. Stat. § 609.582, under which a person can be convicted of burglary if he enters a building without consent and commits a crime while in the building. As Judge Sykes recognized in *Van Cannon*, there are numerous ways under this statute for an entry to be "unprivileged but not accompanied by burglarious intent." 890 F.3d at 664. For example, a trespasser might "recklessly handle[] * * * a dangerous weapon" in a way that "endanger[s] the safety of" his companion. Minn. Stat. § 609.66, subd. 1(a)(1). He could also "recklessly cause[] a child under 14 years of age to be placed in a situation likely to substantially harm the child's physical health," Minn. Stat. § 609.378, subd. 1(c); or negligently store "a loaded firearm in a location where the person * * * reasonably should know[] that a child is likely to gain access," Minn. Stat. § 609.666, subd. 2. If he "broke into a building without permission to escape the cold," *Van Cannon*, 890 F.3d at 664, lit a fire to stay warm, but then was "grossly negligent" in allowing that fire to burn out of control, he would be guilty under Minn. Stat. § 609.576, subd. 1(3), even though he never *intended* to cause fire damage. The same is true if he brings his dog into the building, then negligently allows it to run free, resulting in injury to another person. Minn. Stat. § 609.226 subd. 1.

Under each of these circumstances, the trespasser is a *burglar* in Minnesota. But he has not committed a generic burglary, because he *never* formed the intent to commit any crime other than trespassing. As the Seventh Circuit held, "the trespass-plus crime alternative in the Minnesota statute doesn't require proof of intent to commit a crime *at all*—not at *any* point during the offense conduct." *Van Cannon*, 890 F.3d at 664. And that separates it from generic burglary.

3. In 1995, Tennessee adopted a burglary statute that is nearly identical to Texas's, including the trespass-plus-crime alternative. A defendant commits Tennessee burglary if he "[e]nters a building and commits or attempts to commit a felony, theft or assault." See Tenn. Code § 39-14-402(a)(3) (eff. July 1, 1995). While felonies often involve a more culpable mental state than misdemeanors, not all require specific intent. See, e.g., Tenn. Code § 39-13-103(b)(2), (3) (reckless endangerment with deadly weapon or firearm); *id.* § 39-13-102(a)(1)(B), 102(e)(1)(A)(v) (aggravated assault by reckless causation of serious bodily injury).

4. In 2009, Montana also enacted a burglary statute that does not require the intentional plan needed for generic burglary. Montana's statute, however, is a shorter distance from the generic version than the others. This is because Montana requires proof that the defendant *knowingly or purposefully* committed the other offense while trespassing. Mont. Code § 45-6-204(1)(b) & (2)(a)(ii) (eff. Oct. 1, 2009). Yet that still puts it among the total of five states, including Michigan, that define burglary to include the commission of knowing, negligent, reckless, or even strict liability crimes while trespassing. None of these so-called burglaries has a specific intent element. Each of them is broader than generic burglary for that reason alone, regardless of whether *Taylor*'s "intent" element must be contemporaneous with the initial trespass.

5. This conclusion is only reinforced by ACCA's overarching purposes: to reach the "career offenders" who make their livelihood from crime, *Taylor*, 495 U.S. at 583, or who are dangerous enough to "use [a] gun deliberately to harm a victim," *Begay* v. *United States*, 553 U.S. 137, 145 (2008). Petitioner is correct that a homeless defendant who commits a "low-risk, spur of the moment" crime

while trespassing to "seek shelter from the cold" is a long way from the sort of hardened career criminal ACCA meant to reach. Pet. Br. 3. That distance is all the greater to the person who trespassed having no intent to commit any crime *at all*. There is simply no indication that the unsuspecting boyfriends who sneak in through their underage girlfriends' windows and hapless travelers who lose their dogs ought to have these crimes of circumstance counted toward a 15-year minimum federal sentence. These are simply not the sort of unrepentant careerists that ACCA means to reach.

III. This argument meets the Government's principle substantive objection in this case.

In addition to its historical pedigree and intuitive appeal, amici's argument also fares just as well as Petitioner's own argument at answering the Government's central argument in this case. The Government attempts to paper over Petitioner's objections about timing by labeling them unimportant. In the Government's view, all that ought to matter is that the intent required for burglary exist *at some point*, and it contends "anyone violating" Michigan's home invasion statute "necessarily had to form the requisite intent to commit a misdemeanor either before he entered the dwelling or while he was still inside." U.S. Opp. 8–9 (quoting *Taylor*, 495 U.S. at 499). Petitioner has advanced several good reasons why timing *is* important. But even under the Government's argument, "intent" must still *exist* during the trespass. And Michigan's misdemeanors do not necessarily require "intent," meaning the "requisite intent" for generic burglary is completely absent in Michigan's trespass-plus-crime alternative—and several other states' variants as well. The Government thus has not, and cannot, provide any reason how these trespass-plus-crime statutes can fit within the

definition of generic burglary. That is fatal to the Government's position.

IV. This argument is an appropriate addition to the one Petitioner presents.

There are still more reasons why amici's argument is an appropriate and attractive addition to Petitioner's.

1. For one thing, amici's argument is squarely within the Question Presented, which requires determining "[w]hether *Taylor*'s definition of generic burglary requires proof that intent to commit a crime was present at the time of unlawful entry or first unlawful remaining." (Pet. Br. I) The Court can rule for Petitioner based on both the timing of *when* the "intent to commit a crime" must be formed, and on the absence of any specific "intent to commit a crime" (other than trespass), which is a required element under *Taylor*'s definition of generic burglary. Accordingly, amici's argument is properly before the Court and could provide an appropriate rule of decision in this case.

2. The position amici advance is also narrow in scope. Amici's argument would only apply where state law contains no "intent" element at all. The trespass-plus-crime statutes amici highlight all have the same dual-fit problems as Michigan's home-invasion statute—a mismatch with *Taylor*'s generic burglary definition on two sides: absence of a *contemporaneous* intent element and absence of any intent element *at all*. The rule thus involves the same general universe of burglary variants as Petitioner's argument, but impacts only Michigan and the four other states highlighted above.

The circuit-level cases discussing the contemporaneous intent issue virtually all involve trespass-plus-crime statutes, and thus involve both of the fit problems amici

highlight. That, of course, includes the decision below involving the Michigan home invasion statute. But it also includes two cases involving Minnesota Statutes § 609.582: *Van Cannon*, 890 F.3d at 660, 663-664 and *McArthur*, 836 F.3d 931). It also includes three cases that have involved Tex. Penal Code § 30.02(a)(3): *United States* v. *Bonilla*, 687 F.3d 188, 197 (4th Cir. 2012); *United States* v. *Constante*, 544 F.3d 584, 584 (5th Cir. 2008) (per curiam), and more recently *United States* v. *Herrold*, 883 F.3d 517, 530-531 (5th Cir. 2018) (en banc).

Except for *Van Cannon*, none of the cases examined *both* of these fit problems—each was resolved on the contemporaneous-intent problem alone. *Compare Van Cannon*, 890 F.3d at 664–665 ("[G]eneric burglary requires intent to commit a crime *at the moment of* the unlawful entry or unlawful 'remaining in' a building or structure.") (emphasis in original); *McArthur*, 850 F.3d at 939 ("[A] generic burglary requires intent to commit a crime at the time of the unlawful or unprivileged entry or the initial 'remaining in' without consent."); *Herrold*, 883 F.3d at 536 ("Texas's burglary offense allowing for entry and subsequent intent formation * * * is broader than generic burglary."); *with* Pet. App. 7a–8a; *Bonilla*, 687 F.3d 188 at 193 ("Because [Texas Penal Code] section (a)(3) requires an unlawful entry, of a building or habitation, and the separate intent to commit a felony, theft, or assault, we find that it corresponds 'in substance' to *Taylor*'s generic definition of burglary."). But as *Van Cannon* itself demonstrates, these trespass-plus-crime variants have *two* differences with generic burglary: they not only lack a *contemporaneous* intent element, they lack any intent element *at all*.

3. Both of these fit problems doom the use of Michigan's home-invasion statute as an ACCA predicate. The

decision in this case should highlight both of those fit problems, providing the same guidance for the nation that *Van Cannon* provided for the Seventh Circuit. 890 F.3d at 664–665. At the very least, amici's argument could prove an attractive alternative to ruling for the Government.

4. If the Court were to agree with the Government that generic burglary includes crimes where a trespasser initially lacks any intent to commit another crime but later forms that intent, then, at a minimum, amici urge the Court to remand the case to the Sixth Circuit for consideration of *non-intentional* crimes committed by a trespasser.

That was the course the Court took in *United States v. Stitt*, 139 S. Ct. 399 (2018). The primary question the Court considered was whether burglary of a vehicle "designed or adapted for overnight use" is a generic burglary. *Id.* at 407. The Court answered that question in the affirmative. One of the respondents raised an additional argument: that Arkansas permitted conviction for burglary of a non-adapted vehicle "in which any person lives." *Stitt*, 139 S. Ct. at 407–408. This Court remanded that case to the Eighth Circuit for further consideration of that aspect of Arkansas law. *Id.* It would be equally appropriate for the Court to follow that course here.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

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APPENDIX

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APPENDIX A

Texas Penal Code § 30.02. Burglary

(a) A person commits an offense if, without the effective consent of the owner, the person:

(1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault; or

(2) remains concealed, with intent to commit a felony, theft, or an assault, in a building or habitation; or

(3) enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.

* * *

APPENDIX B

Minnesota Statutes § 609.582. Burglary

Subdivision 1. Burglary in the first degree. Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the first degree and may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than $35,000, or both, if:

(a) the building is a dwelling and another person, not an accomplice, is present in it when the burglar enters or at any time while the burglar is in the building;

(b) the burglar possesses, when entering or at any time while in the building, any of the following: a dangerous weapon, any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or an explosive; or

(c) the burglar assaults a person within the building or on the building's appurtenant property.

Subd. 1a. Mandatory minimum sentence for burglary of occupied dwelling. A person convicted of committing burglary of an occupied dwelling, as defined in subdivision 1, clause (a), must be committed to the commissioner of

corrections or county workhouse for not less than six months.

Subd. 2. Burglary in the second degree. (a) Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the second degree and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both, if:

(1) the building is a dwelling;

(2) the portion of the building entered contains a banking business or other business of receiving securities or other valuable papers for deposit or safekeeping and the entry is with force or threat of force;

(3) the portion of the building entered contains a pharmacy or other lawful business or practice in which controlled substances are routinely held or stored, and the entry is forcible; or

(4) when entering or while in the building, the burglar possesses a tool to gain access to money or property.

(b) Whoever enters a government building, religious establishment, historic property, or school building without consent and with intent to commit a crime under section 609.52 or 609.595, or enters a government building, religious establishment, historic property, or school building without consent and commits a crime under

section 609.52 or 609.595 while in the building, either directly or as an accomplice, commits burglary in the second degree and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both.

Subd. 3. Burglary in the third degree. Whoever enters a building without consent and with intent to steal or commit any felony or gross misdemeanor while in the building, or enters a building without consent and steals or commits a felony or gross misdemeanor while in the building, either directly or as an accomplice, commits burglary in the third degree and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both.

Subd. 4. Burglary in the fourth degree. Whoever enters a building without consent and with intent to commit a misdemeanor other than to steal, or enters a building without consent and commits a misdemeanor other than to steal while in the building, either directly or as an accomplice, commits burglary in the fourth degree and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both.

APPENDIX C

Tennessee Code § 39-14-402. Burglary

(a) A person commits burglary who, without the effective consent of the property owner:

(1) Enters a building other than a habitation (or any portion thereof) not open to the public, with intent to commit a felony, theft or assault;

(2) Remains concealed, with the intent to commit a felony, theft or assault, in a building;

(3) Enters a building and commits or attempts to commit a felony, theft or assault; or

(4) Enters any freight or passenger car, automobile, truck, trailer, boat, airplane or other motor vehicle with intent to commit a felony, theft or assault or commits or attempts to commit a felony, theft or assault.

* * *

APPENDIX D

Michigan Compiled Laws § 750.110a. Definitions; breaking and entering a dwelling; crime of home invasion

* * *

(2) A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling.

(3) A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the second degree.

(4) A person is guilty of home invasion in the third degree if the person does either of the following:

(a) Breaks and enters a dwelling with intent to commit a misdemeanor in the dwelling, enters a dwelling without permission with intent to commit a misdemeanor in the dwelling, or breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a misdemeanor.

(b) Breaks and enters a dwelling or enters a dwelling without permission and, at any time while the person is entering, present in, or exiting the dwelling, violates any of the following ordered to protect a named person or persons:

(i) A probation term or condition.

(ii) A parole term or condition.

(iii) A personal protection order term or condition.

(iv) A bond or bail condition or any condition of pretrial release.

APPENDIX E

Montana Code § 45-6-204. Burglary

(1) A person commits the offense of burglary if the person knowingly enters or remains unlawfully in an occupied structure and:

(a) the person has the purpose to commit an offense in the occupied structure; or

(b) the person knowingly or purposely commits any other offense within that structure.

(2) A person commits the offense of aggravated burglary if the person knowingly enters or remains unlawfully in an occupied structure and:

(a)(i) the person has the purpose to commit an offense in the occupied structure; or

(ii) the person knowingly or purposely commits any other offense within that structure; and

(b) in effecting entry or in the course of committing the offense or in immediate flight after effecting entry or committing the offense:

(i) the person or another participant in the offense is armed with explosives or a weapon; or

(ii) the person purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone. * * *